



Title 10, Chapter 13, Article 1, Sections 8000-8040 California Competes Tax Credit

Notice published September 12, 2014

NOTICE OF PROPOSED RULEMAKING

The Governor's Office of Business and Economic Development (GO-Biz) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

GO-Biz has not scheduled a public hearing for this proposed action. However, if it receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period, GO-Biz will conduct a public hearing on this proposed action and will notify all interested parties of the date, time, and location of the hearing pursuant to Government Code section 11346.8(a).

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to GO-Biz at the address below. Comments may also be submitted by email to CalCompetes@gov.ca.gov. The written comment period closes at **5:00pm on October 27, 2014**. GO-Biz will only consider comments received at the GO-Biz office by that time. Submit comments to:

William Koch, Deputy Director
Governor's Office of Business and Economic Development
1325 J Street, Suite 1800
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Revenue and Taxation Code Sections 17059.2(h) and 23689(h) authorize GO-Biz to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 17059.2, 18410.2 and 23689 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Governor Edmund G. Brown Jr. established the Governor's Economic Development Initiative (GEDI) by signing Assembly Bill 93 (Cmte. on Budget, Chapter 69, Statutes of 2013) and Senate Bill 90 (Galgiani, Chapter 70, Statutes of 2013) into law. GEDI is comprised of the Manufacturing Equipment Sales and

Use Tax Exemption, New Employment Credit, and the California Competes Tax Credit (CCTC). The Governor's Office of Business and Economic Development (GO-Biz) is responsible for implementation of the CCTC. The CCTC is a state-wide program available to both large and small businesses, with 25% of available credit each year specifically reserved for small businesses. Section 1 of AB 93 makes it clear the intent of GEDI is to attract and retain high-value employers while at the same time ensuring accountability for the state's job creation efforts and the effective use of taxpayer dollars is maximized.

In the 2013-14 fiscal year, thirty million dollars of tax credits were available for distribution. In order to implement the program in fiscal year 2013-14, emergency regulations were adopted on February 20, 2014. As part of the regulations, GO-Biz developed an application process to implement the tax credit and make determinations as to which taxpayers will be granted the tax credit based upon a competitive application process. The emergency regulations were due to expire on August 20, 2014; therefore, GO-Biz submitted amended emergency regulations that were adopted on August 18, 2014 to avoid any lapse or delays in the program. These emergency regulations are valid for 90 days and expire on November 18, 2014.

This rulemaking action clarifies and makes specific the application and evaluation process for the California Competes Tax Credit (CCTC) program.

The regulations proposed in this rulemaking action would establish an application process to administer the tax credit and allow GO-Biz to make determinations as to which taxpayers will be awarded the tax credit. The credits are awarded through a competitive process and with the approval of the California Competes Tax Credit Committee.¹ In addition, the regulations meet the statutory requirements of (1) creating an accountable and transparent process and (2) providing sufficient time to allow for the negotiations between GO-Biz and the applicants for the tax credit. Section 1 of AB 93 (Chapter 69, Statutes of 2013) clearly articulates the purpose of the CCTC is attract and retain high-value employers while being a model of transparency and accountability for the state's job creation efforts and ensuring that the effective use of taxpayer dollars is maximized.

Anticipated Benefits of the Proposed Regulation:

The proposed CCTC regulations support high wage job creation² and contribute to investments made in California. The proposed regulations improve the business climate by reducing the tax burden of doing business in California and boosting the state's competitive advantage. In addition, the regulations assist businesses that absent the credit would implement their project in another state or terminate or relocate all or a portion of their employees out California by prioritizing and advancing their applications to the second phase of the evaluation process.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

¹ The California Competes Tax Credit Committee is comprised of the Director of GO-Biz, Director of Finance, State Treasurer, and two representatives appointed respectively by the State Assembly and Senate.

² In the first phase of evaluation CCTC considers employee compensation and investments to determine the top 200% of applicants that advance.

In order to implement the CCTC program in fiscal year 2013-14, emergency regulations (2014-0210-01E) were adopted on February 20, 2014. The emergency regulations were amended and re-adopted on August 18, 2014 (2014-0808-01EE). These proposed permanent regulations are identical to the emergency regulations adopted on August 18, 2014. No other state agency has issued any regulations relating to the California Competes Tax Credit Program, therefore there are no inconsistencies or incompatibilities with existing state regulations relating to the California Competes Tax Credit Program.

DISCLOSURES REGARDING THE PROPOSED ACTION

GO-Biz has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: GO-Biz estimates implementation resources needs for the first year of the program will amount to \$965,000, and future years will cost \$935,000 per year to administer the program.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business:

While there is not a direct cost to consumers, if the tax revenue used to fund the CCTC was used for other government programs or services, the tax burden for consumers may have been reduced accordingly. Under this rationale, the tax credit has a cost to consumer spending for the amount of the allocated credit each year.

Although this tax credit program does not incur any direct costs to businesses, in some cases applicants hire consultants, and other third parties to assist with the application process. Approximately, 30% of the applicants in the fiscal year 2013-14 utilized these types of third-party service providers.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), GO-Biz must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be: (1) more effective in carrying out the purpose for which the action is

proposed or (2) would be as effective and less burdensome to affected private persons than the proposed action or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Scott Dosick, CCTC Specialist
Governor's Office of Business and Economic Development
1325 J Street, Suite 1800
Sacramento, CA 95814
Email: calcompetes@gov.ca.gov
Phone: (916) 322-0676

Or his backup:

Ryan Roebuck, CCTC Specialist
Governor's Office of Business and Economic Development
1325 J Street, Suite 1800
Sacramento, CA 95814
Email: calcompetes@gov.ca.gov
Phone: (916) 322-0692

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, or other information upon which the rulemaking is based to Scott Dosick at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

GO-Biz will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by downloading them at www.business.ca.gov/CalCompetes.aspx or contacting Scott Dosick at the above address or at CalCompetes@gov.ca.gov

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, GO-Biz may adopt the proposed regulations substantially as described in this notice. If GO-Biz makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before GO-Biz adopts the regulations as revised. Please send

requests for copies of any modified regulations to the attention of Scott Dosick at the address indicated above. GO-Biz will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Scott Dosick at the address above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations can be accessed through our website at www.business.ca.gov/CalCompetes.aspx.

RESULTS OF THE STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA) PREPARED PURSUANT TO GOVERNMENT CODE 11346.3(c) (MAJOR REGULATIONS)

The CCTC regulations will help improve California's economy. The projections for job impacts and personal income are substantial. According to results of the SRIA, the program will support approximately 352,000 direct, indirect and induced jobs and \$23.7 billion in employee compensation through 2018. Additionally, the increases in investment output, estimated to be approximately \$4.5 billion, will have a positive impact on the economy. The value of increased production on the state economy is estimated to be roughly \$9.7 billion. All of the discussed economic impacts produce a positive outcome on the California economy. This outcome supports the intention of GEDI to help California businesses grow and expand.

Benefits of the Proposed Action:

The CCTC boosts competitiveness by reducing the cost of doing business in the state. For fiscal year 2013-14, \$28,904,663 in tax credits were distributed to 29 businesses. Of those businesses, 25% were located in an area where the level of poverty and unemployment was greater than the statewide average.³ The regulations also give the state a tool to combat competition from other states by retaining businesses that are at risk of relocation because these applicants are prioritized and automatically advanced to the second phase of credit award evaluation. In the fiscal year 2013-14, 13.8% (4 out of 29 awardees) of the credits were distributed to applicants at-risk of leaving the state. Without this regulation, it is possible that new jobs and investments would still occur; however, the scale and magnitude would not be as significant. Furthermore, without the support of this tax credit it is likely that some businesses would choose to relocate to states with similar programs or other tax incentives.

³ Poverty threshold data was provided by the United State Census Bureau; unemployment data was provided by the California Employment Development Department.

Small Business Determination:

As part of the SRIA, GO-Biz has determined that the proposed regulations will affect small businesses. The proposed regulations have the potential to impact all industries in California with limited exception. The proposed regulations improve the business climate by reducing the tax burden of doing business, allowing companies to invest in innovation and boosting the states competitive advantage. Although this tax credit program does not incur any direct costs to businesses, in some cases applicants will hire consultants, attorneys and other third parties to complete their application/credit negotiations.

Summary of Comments from Department of Finance:

The Department of Finance conducted a review of GO-Biz's SRIA for the proposed regulations. DOF Comments are summarized and responded to below:

Based on the evidence presented in the SRIA, GO-Biz concluded that the CCTC would help businesses in California grow and expand. The Department of Finance broadly agrees with the methodologies outline in the assessment of the CCTC, and the magnitude of the estimated impacts is appropriate. The SRIA is written in clear language, which allows the general public to understand the tradeoffs in the regulation. The discussion of the various benefits and costs are presented in a transparent manner, and allow the reader to see the resulting impacts. It may be helpful to also include a short discussion of the broad sectors to which the funding in 2013-14 was allocated, and how that differs from the sectors that were assumed to receive funds for the IMPLAN calculations. However, this is entirely optional.

GO-Biz Response:

The Department of Finance suggested that it may be helpful (but entirely optional) to add to the SRIA a short discussion of the broad sectors to which the funding in 2013-2014 was allocated, and how that differs from the sectors that were assumed to receive funds for the IMPLAN calculations. Because the California Competes Tax Credit Program is available to all businesses within all sectors, it seems unnecessary to consider a discussion of the 2013-14 awardee sectors. It is likely the sectors will change with each subsequent award cycle throughout the length of the California Competes Tax Credit program, and GO-Biz does not believe that the sectors awarded in the first round of funding are a sound indicator of future awardee sectors. The IMPLAN model created reflected the opportunity for all California companies to have access to the program.